

## **405 KAR 30:100. Enforcement.**

RELATES TO: KRS 350.600

STATUTORY AUTHORITY: KRS 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation requires that a notice of noncompliance and order for remedial measures be issued for violations of KRS 350.600, the administrative regulations promulgated pursuant thereto, any permit condition, or any other applicable statute or administrative regulation. The administrative regulation sets forth the general form of the notices, and hearing procedures.

Section 1. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized employee of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he finds a violation of KRS 350.600, the administrative regulations promulgated pursuant thereto, any permit condition, or any other applicable statute or administrative regulation.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps, if appropriate; and

(d) A reasonable description of the portion of the oil shale operation to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 3 of this administrative regulation.

(4) Extension. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued. The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice, except upon a showing by the permittee that it is not feasible to abate the violation within ninety (90) days.

(5) Modification and termination. An authorized employee may modify or terminate an order for remedial measures for good cause.

Section 2. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized employee issues a notice of noncompliance and order for remedial measures he shall reinspect the permit area on or soon after the date given in the notice or order for completion of remedial measures. At the time of this reinspection, the authorized representative shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed.

(3) Service. Service of a notice of inspection of noncompliance shall be in the manner set forth in Section 3 of this administrative regulation.

(4) The correction of a violation shall not affect the right of the cabinet to assess civil penalties for that violation pursuant to 405 KAR or to impose any other applicable sanctions as authorized by law.

Section 3. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, any notice of inspection of noncompliance, and any other order of the cabinet shall be served on the person to whom it is issued, in person or by mailing it to the permanent address shown on the permit and application; or by hand to the designated agent or to the individual who, based upon reasonable inquiry by the authorized employee, appears to be in charge at the site of the oil shale operation. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. If no person is present at the site of the operation, service by mail upon the permittee shall by itself be sufficient notice.

(2) Designation by any person of an agent for service of notices and orders shall be made a part of the permit application. Such person shall continue as agent for service of process until such time as written revision of the permit is made which designates another person as agent.

(3) The cabinet may furnish copies of notices and orders to any person having an interest in the oil shale operation.

Section 4. Suspension or Revocation of Mining Permits and Exploration Permits. (1) The cabinet may, after hearing pursuant to KRS Chapter 224, suspend or revoke a permit if the cabinet determines that a pattern of violations of any requirement of KRS 350.600, the administrative regulations promulgated pursuant thereto, any other applicable statutes or administrative regulations, or any permit condition, exists or has existed.

(2) The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area after considering the circumstances, including:

(a) The number of violations cited on more than one (1) occasion as to same or related requirements of KRS 350.600, the administrative regulations promulgated pursuant thereto, any other applicable statutes or administrative regulations, or permit conditions;

(b) The number of violations cited on more than one (1) occasion as to different requirements of KRS 350.600, the administrative regulations promulgated pursuant thereto, any other applicable statutes and administrative regulations, or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(3) If the cabinet revokes or suspends the permit, the permittee shall immediately cease oil shale operations on the permit area and shall:

(a) If the permit is revoked, complete reclamation within the time specified in the order; or

(b) If the permit is suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order. (8 Ky.R. 97; Am. 471; eff. 3-1-82; TAm eff. 8-9-2007.)